

In the High Court of Judicature at Madras

Dated:18.04.2005

Coram:

The Hon'ble Mr. Justice P. Sathasivam
and

The Hon'ble Mr. Justice S.K. Krishnan

O.S. Appeal No.286 of 2004
and CMP.No.20332 of 2004 & VCMP.No.20652 of 2004

R. Soundararajan ... Appellant/1st Defendant

vs.

1. R. Sivaprakasam
2. Mangaleshwari
3. Rajalakshmi
4. R. Nityakalyani
5. Santha Valli

... Plaintiff/Respondents/Defendants 2 to 5

Original Side Appeal preferred against the order dated 25.11.2004 made in Original Application Nos.309 of 2002 in c.S.No.306 of 2002, on the file of this Court.

For appellant : Mr. K. Venkataraman

For respondents : Mr. R. Thiagarajan for R.1

Mr. V. Raghavachari for R.2

Mrs. Shoba Ramachandran for R.3

Mr. T.Easwaradas for R.4

Mr. P.K. Sivasubramanian for R.5

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JUDGMENT

(Judgment of the Court was delivered by P. Sathasivam,J.,)

The above original side appeal has been filed against the order dated 25.11.2004 made in Original Application No.309 of 2002,

in and by which the learned Judge appointed one Mr. A. Shaik Pareeth, Advocate, Chennai as Receiver, to take charge of the suit properties.

2. The brief facts which are required for disposal of the above appeal alone are stated hereunder:

(a) The first defendant in CS.No.306 of 2002 is the appellant in the above appeal. Respondents in this appeal are plaintiff and defendants 2 to 5. According to the plaintiff R. Sivaprakasam, his father late E. Ramadoss Chetty, died intestate leaving behind him the following as his legal heirs.

- (i) Mrs. Mangaleshwari (wife-D2)
- (ii) Mrs. R. Rajalakshmi (first daughter - D3)
- (iii) R. Sivaprakasam (first son - plaintiff / applicant)
- (iv) R. Soundararajan (second son - D1)
- (v) R. Nithyakalyani (second daughter - D4)
- (vi) R. Santhavalli (third daughter - D5)
- (vii) Alamelu Ammal - mother of the deceased Ramadoss Chetty.

The said Alamelu Ammal died on 13.06.1998. Late E. Ramadoss Chetty died intestate on 05.10.1996, without dividing the suit schedule mentioned properties, leaving the plaintiff and defendants as his legal heirs. After the demise of Ramadoss Chetty, the suit properties are in joint possession and enjoyment of the plaintiff and defendants without there being any division by metes and bounds.

(b) According to the plaintiff, late E. Ramadoss Chetty was entitled to 1/3 share; Sivaprakasam (plaintiff) was entitled to 1/3 share and the first defendant Soundararajan being entitled for the remaining 1/3 share. After the demise of Ramadoss Chetty, his 1/3 share devolved on Mrs. Mangaleswari, Rajalakshmi, Nithyakalyani and Santhavalli, each will be entitled 1/21st share. The plaintiff shall be entitled to 8/21 share; first defendant is entitled 8/21 share in each of the properties and the reminder shall devolve upon the sisters and mother of the plaintiff, viz., defendants 2 to 5.

(c) The plaintiff has been demanding division of suit properties by metes and bounds, since it would be no longer possible and feasible after the demise of his father to maintain the joint family and the status on account of divergent views among the parties hereto. The first defendant though agreeable for partition, has started acting detrimental to the interest of the plaintiff as well as other joint owners of the suit properties by misappropriating the income derived from the suit properties. Hence, the present suit for partition.

3. Pending the suit, the plaintiff filed Application Nos.309 and 310 of 2003, to appoint the applicant / plaintiff as party Receiver for realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof as well as for interim injunction restraining the first respondent / defendant (appellant herein), his men, servants, agents or anybody claiming through him from alienating or dealing with the suit properties either by way of sale, mortgage, lease or development or otherwise.

4. In the affidavit filed in support of the said application, the plaintiff / applicant has once again reiterated the same thing what he has stated in the plaint. The first respondent / first defendant has misappropriated funds realised from the suit properties and not rendering true and proper accounts and the expenses incurred in relation to the estate of their father. It is also stated that he is acting detrimental to the interest of other sharers. It is further stated that the first respondent is trying to alienate the suit properties.

5. A common counter affidavit was filed by the contesting first respondent R. Soundarrajan, wherein he has stated that he is not disputing the entitlement of the share of the parties, however, denied the allegation of misappropriation and mismanagement.

6. The other respondents have filed a counter affidavit, which we are not concerned for the present.

7. The learned single Judge, after considering the claim of both parties as well as the report of the Advocate Commissioner, appointed a third party Receiver, viz., A. Shaik Pareeth, Advocate, as Receiver to take charge of the suit properties. Aggrieved by the said order, the first respondent / first defendant preferred the above appeal.

8. Heard the learned counsel for the appellant as well as the respondents.

9. As observed in the case of Jambagavalli Ammal vs. Govindaraja Kandikar reported in AIR 1980 Madras 103, it is the duty of the Court to see that the suit properties to be preserved without being wasted. It is also a settled law that appointment of a Receiver, pending suit is a matter resting in the discretion of the Court. As said in the case of Krishnaswamy vs. Thangavelu reported in AIR 1955 Madras 430, the element of danger is an important consideration. Before the learned single Judge, in the application filed for an appointment of a Receiver, the applicant as well as the respondents therein highlighted the properties left

by their father, nature and income thereon, etc., It is also not in dispute that there is no consensus among the sharers and they are not ready to adjust or give up their right atleast for management till the disposal of the suit.

10. It is also brought to our notice that during the pendency of the application, the learned single Judge has appointed one G. Ganapathy, Advocate as an Advocate Commissioner in O.A.No.309 of 2002 and he also filed a report. The cursory look of the report shows that most of the properties are with defendants 1 and 2, either directly or through the tenants. The learned Judge has extracted the gist of the Commissioner's report in paragraph 8 of his order, which contains all the details, such as, nature and income/rent. Same paragraph also refers statement of account that had been filed by the first and second respondents / defendants 1 and 2, the amount paid to the plaintiff and other defendants. No doubt, some of the respondents / defendants denied those statements / averments.

11. Though the learned Judge has expressed that the accounts submitted by respondents 1 and 2 therein are not per-se admissible, the fact remains, as said earlier, most of the properties are either under their enjoyment or collecting rents from tenants. It is also relevant to note that most of the properties are land and buildings situated in Kannigaiper Village, Uthukottai Taluk, Bazar Street, Red Hills, Padiyanallur Village and also at Linghi Chetty Street. It is further relevant to note that both the first and second defendants (appellant and the second respondent herein) are residing at Old No.64, Pillaiyar Koil Street, Red Hills, Chennai 52. We are conscious of the fact that the details furnished by them, particularly regarding income are not acceptable by the learned judge, but it is not in dispute that undoubtedly they are sharers of the properties in dispute. In such a circumstance, particularly of the fact that the properties consist of land and building, we are of the view that it is not desirable to appoint an Advocate Receiver to manage the suit properties. It is also not in dispute that an Advocate Receiver can go and cultivate personally, but, in order to assist him, undoubtedly, he may engage another person for cultivation and collection of rents, this will lead to further expense, which ultimately affect the interest of all the sharers.

12. It is also brought to our notice that even before the learned Judge the parties are not inclined for appointment of an Advocate Receiver and they rather preferred a party Receiver to take charge of the suit properties. Considering the fact that the suit properties are to be preserved without being wasted, at the same time third party cannot be inducted as a Receiver to take charge of the properties after due deliberation, we consider that

it is just and reasonable to appoint defendants 1 and 2 i.e., appellant and the second respondent herein, viz., R. Soundararajan and Mangaleswari as Joint Receivers to the suit properties. It is their responsibility to protect the properties, collect rents from various tenants, try to get more income from the agricultural / vacant lands and submit proper and true accounts to this Court once in three months. This court hopes that the Joint Receivers being the sharers of the suit properties, they will take atmost interest in safeguarding the properties and for generating more income. They are permitted to do only the legitimate expenses and submit accounts / vouchers for all expenses. The other sharers are entitled to submit their objection if any on the report of the Joint Receivers and they are also free to move this Court for modification, if need arise.

With the above direction, the order of the learned single Judge dated 25.11.2004 made in O.A.No.309 of 2002 in C.S.No.306 of 2002, is set aside and the Original Side appeal is allowed. No costs. Consequently, connected CMP., and VCMP., are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Sub Asst. Registrar
Original Side, High Court, Madras.

2.R.Soundararajan ,	)
Old Door No.64, Pillaiyar Kovil Street,	)
Red Hills Chennai -52 (Appellant)	)Both Appellant and 2nd
3.Smt.Mangaleswari,	)respondent to be appointed
Old Door No.64,	)as Joint Receivers as
Pillaiyar Kovil Street, Red Hills,	)mentioned supra in
Chennai -52 (2nd Respondent)	)para 12

+1cc to Mr.P.K.Sivasubramanian Advocate Sr 18170
+1cc to Mr.K.Venkataraman, Advocate Sr 18195
+2ccs to Mr.R.Thiagarajan, Advocate Sr 18169

GM (CO)
km/20.4.

O.S.A.No.286 of 2004